

Jacob D. Braunstein, OSB# 062849
jbraunstein@clarkebalcomlaw.com
E. Clarke Balcom, OSB# 011952
cbalcom@clarkebalcomlaw.com
CLARKE BALCOM, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201-2516
Telephone (503) 224-5950
Fax (503) 467-4669
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**NATHANIEL J. APPLEFIELD,
LISBETH APPLEFIELD,**

Plaintiffs,

v.

PINNACLE ASSET GROUP, LLC,

Defendant.

Case No. 3:16-cv-00256-YY

MOTION FOR AN AWARD OF
ATTORNEY FEES AND COSTS

Pursuant to FRCP 54(d)(2) and LR 54.3, Plaintiffs move the Court for an award of attorney fees and costs in the amount of \$22,284.46. Plaintiffs are entitled to an award of attorney fees and costs pursuant to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692k(a)(3).

This motion is supported by the declaration of Jacob D. Braunstein together with the memorandum of law filed contemporaneously with this motion. For the reasons set forth in the

attached memorandum of law, the attorney fees sought in this matter are reasonable and supported by the FDCPA and applicable legal authority.

Respectfully submitted this 13th day of July 2016,

CLARKE BALCOM, P.C.

By: /s/ Jacob D. Braunstein

Jacob D. Braunstein, OSB No. 062849

Email: jbraunstein@clarkebalcomlaw.com

1312 SW 16th Ave., 2nd Floor

Portland, OR 97201

Telephone: 503-224-5950

Fax: 503-467-4669

Of Attorneys for Plaintiff

Jacob D. Braunstein, OSB# 062849
jbraunstein@clarkebalcomlaw.com
E. Clarke Balcom, OSB# 011952
cbalcom@clarkebalcomlaw.com
CLARKE BALCOM, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201-2516
Telephone (503) 224-5950
Fax (503) 467-4669
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**NATHANIEL J. APPLEFIELD,
LISBETH APPLEFIELD,**

Plaintiffs,

v.

PINNACLE ASSET GROUP, LLC,

Defendant.

Case No. 3:16-cv-00256-YY

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN AWARD
OF ATTORNEY FEES AND COSTS

On August 30, 2007, Plaintiffs Nathaniel J. Applefield and Lisbeth Applefield filed a complaint alleging that Defendant Pinnacle Asset Group, LLC, violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), as well as the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, and the Oregon Unlawful Debt Collection Practices Act, ORS 649.639 *et seq.* Defendant failed to appear or otherwise defend and a default judgment was entered against Defendant and for Plaintiffs on June 29, 2016.

STATEMENT OF FACTS

In this litigation, Plaintiffs were represented by Clarke Balcom, P.C. Clarke Balcom, P.C., expended 75.6 hours during the course of this litigation. Clarke Balcom, P.C. employed two attorneys, Mr. E. Clarke Balcom and Mr. Jacob D. Braunstein, and five paralegals, Ms. Chris Flamm, Ms. Eloise Tiller, Ms. Amy Kaufman, Ms. Hollande Lawrence and Ms. Michelle Benedict, during the course of Clarke Balcom, P.C.'s representation of Plaintiffs regarding allegations against Defendant stemming from Defendant's violation of the FDCPA, TCPA and OUDCPA.

Mr. Jacob D. Braunstein, the lead attorney, expended 57.2 hours in representation of Plaintiff (Paragraph #8, Declaration of Jacob D. Braunstein in Support of Plaintiffs' Motion for an Award of Attorney Fees). The reasonable hourly rate for an attorney of Mr. Braunstein's experience is \$350.00 (Paragraph #11, Decl. of Jacob D. Braunstein). Mr. E. Clarke Balcom, the senior attorney, expended 1.7 hours in representation of Plaintiff (See Exhibit A). The reasonable hourly rate for an attorney of Mr. Balcom's experience is \$375.00 (Paragraph #8, Decl. of E. Clarke Balcom).

Ms. Chris Flamm, a paralegal of Clarke Balcom, P.C., expended 9.3 hours during the course of Clarke Balcom P.C.'s representation of Plaintiffs (Paragraph #19, Decl. of Chris Flamm). The reasonable hourly rate for a paralegal of Ms. Chris A. Flamm's experience is \$160.00 (Paragraph #14, Decl. of Chris Flamm). All other legal assistants expended 7.4 hours during the course of Clarke Balcom, P.C.'s representation of Plaintiffs (Paragraph #20, Decl. of Chris Flamm).

An amount totaling \$22,281.46 is sought as attorney fees and costs for Clarke Balcom, P.C.'s representation of Plaintiffs. See Paragraph #7 of Declaration of Jacob D. Braunstein.

Page 2 of 7 – MEMORANDUM IN SUPPORT OF MOTION FOR
AWARD OF ATTORNEY FEES

Clarke Balcom, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201
Tel: (503)224-5950
Fax: (503)467-4669

STATEMENT OF QUESTION PRESENTED

Question: Are Plaintiffs entitled to an award of reasonable attorney fees?

Answer: Plaintiffs respectfully submit that this question should be answered in the affirmative.

ARGUMENT

I. Plaintiffs Were Successful In This Action

The Fair Debt Collection Practices Act requires the payment of costs and reasonable attorney fees to a successful consumer.

[A]ny debt collector who fails to comply with any provision of this subchapter . . . is liable to such person in an amount equal to the sum of—[actual damages] [statutory damages] . . . and (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney fee as determined by the court.

15 U.S.C. §1692k(a).

The language of the FDCPA makes an award of attorney fees mandatory. *Mace v. Van Ru Credit Corp.*, 69 F.3d 338, 345 fn3 (7th Cir. 1997), citing *Tolentino v. Friedman*, 46 F.3d 645,651 (7th Cir. 1995). In litigation pursuant to the Fair Debt Collection Practices Act, the Second Circuit stated “the award of attorney fees to plaintiffs for a debt collector’s violation of ‘any provision’ of the FDCPA is mandatory” *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 28 (2d Cir. 1989), citing *Emanuel v. American Credit Exchange*, 870 F.2d 805, 809 (2d Cir. 1989).

“Under the Fair Debt Collection Practices Act (“FDCPA”), the prevailing plaintiff is entitled to ‘a reasonable attorney’s fee as determined by the court.’ 15 U.S.C. §1692k(a)(3). Such an award is mandatory under the FDCPA.” *Edwards v. National Business Factors, Inc.*,

897 F.Supp. 458, 459 (D.Nev. 1995) (citations omitted). As the prevailing party in this case, Plaintiffs are entitled to an award of costs and reasonable attorney fees. *Thorpe v. Collection Information Bureau, Inc.*, 963 F.Supp. 1172, 1174 (S.D.Fla. 1996). Given the structure of the attorney fee provision, “attorney’s fees should not be construed as a special or discretionary remedy; rather, the Act mandates an award of attorney fees as a means of fulfilling Congress’s intent that the Act should be enforced by debtors acting as private attorneys general.” *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991). See also *DeJesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 235 (1st Cir. 1990) (awarding attorney fees under Truth in Lending Act).

In the present case, Plaintiffs are entitled to an award of attorney’s fees and costs as Plaintiffs were the prevailing party in this litigation. Plaintiffs filed a complaint on February 11, 2016 and service of process was made on Defendant on February 24, 2016. Defendant failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. A default judgment in the amount of \$432,200.00 was awarded to Plaintiffs on June 29, 2016. Plaintiffs are the prevailing party and, as a result, attorney fees should be awarded to Plaintiffs.

II. Attorney Fees Are To Be Awarded Pursuant To The Lodestar Formula

In calculating an award of attorney’s fees, the court must begin with the “lodestar” figure, which is the hours reasonably expended times an allowed hourly rate. See *Hensley v. Eckerhart*, 103 S.Ct. 1933, 1939; 46 U.S. 424, 433 (1983) (viewing an award of fees under 42 U.S.C. §1988). The burden is on the applicant to prove that the fee request is reasonable, with a strong presumption that the lodestar amount represents a fair and appropriate fee award. *Hensley*, 103 S.Ct. at 1941.

Although *Hensley* was decided in the context of a civil rights case, the lodestar analysis is applicable to all cases involving an attorney fee shifting statute. The Supreme Court has

previously noted that, “We have stated in the past that fee shifting statutes’ similar language is ‘a strong indication’ that they are to be interpreted alike.” *Independent Federation of Flight Attendants v. Zipes*, 491 U.S. 754, 109 S.Ct. 2732, 105 L.Ed.2d 639 (1989) (quoting *Northcross v. Memphis Bd. Of Education*, 412 U.S. 427, 428, 93 S.Ct. 2201, 2202, 37 L.Ed.2d 48 (1973).) See also *City of Burlington v. Dague*, 112 S.Ct. 2638, 2641 (1992) (clean water act case applying lodestar analysis); *Simpson v. Sheahan*, 104 F.3d 998, (7th Cir. 1997) (civil rights case); *DeJesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990) (truth in lending case).

The determination of the allowable hours rests with the sound discretion of the trial court. *Hensley*, 103 S.Ct. at 1941. A determination of the hourly rate by the trial court should consider a rate “commensurate which [counsel] could obtain by taking other types of cases.” *Tolentino*, 46 F.3d 645, 652 - 653 (7th Cir. 1995).

Clarke Balcom, P.C. expended 75.6 hours during the course of this litigation. This amount of time is reasonable. During the course of this litigation, Clarke Balcom, P.C. employed two attorneys, Mr. E. Clarke Balcom and Mr. Jacob D. Braunstein, and five paralegals to resolve Plaintiffs’ allegations against Defendant. The reasonable hourly rate for an attorney with Mr. E. Clarke Balcom’s experience in this type of litigation is \$375.00 per hour (Paragraph #8, Decl. of E. Clarke Balcom). This is the prevailing market rate in this type of representation. *Blum v. Stenson*, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). The lodestar calculation for the efforts of Mr. E. Clarke Balcom in this litigation is 1.7 hours x \$375.00/hr = \$637.50.

The reasonable hourly rate for an attorney with Mr. Jacob D. Braunstein’s experience in this type of litigation is \$350.00 per hour (Paragraph #11, Decl. of Jacob D. Braunstein). This is the prevailing market rate in this type of representation. *Blum v. Stenson*, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). The lodestar calculation for the efforts of Mr. Jacob D.

Braunstein in this litigation is 57.2 hours x \$350.00/hr = \$20,020.00. However, with discounts and write-offs of time, the billing has been reduced to \$18,787.50 (See Exhibit A).

The reasonable hourly rate for a paralegal with Ms. Chris A. Flamm's experience in this type of litigation is \$160.00 per hour (Paragraph #14, Decl. of Chris Flamm). This is the prevailing market rate in this type of representation. *Blum v. Stenson*, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). The lodestar calculation for the efforts of Ms. Chris A. Flamm in this litigation is 9.3 hours x \$160.00/hr = \$1,488.00. However, with discounts and write-offs of time, the billing has been reduced to \$1,193.00 (See Exhibit A).

Clarke Balcom, P.C., also incurred \$847.46 as costs and expenses of this litigation, paid by Plaintiffs. Thus, the total lodestar calculation for the award of attorney fees to Plaintiff in this matter (with discounts and write-offs included) totals \$21,434.00 and costs of \$847.46.

III. Plaintiffs' Attorneys Are Entitled To An Award Of Costs and Litigation Expenses

Plaintiffs have requested the award of costs and litigation expenses in addition to an award of attorney fees. The District of Nevada stated that "plaintiffs are also entitled to an award of costs representing out-of-pocket litigation expenses . . . includ[ing] costs incurred in travel (airfare, car rental, hotels and food, gasoline and the like), telephone, postage and photocopying." *Ilick v. Miller*, 68 F.Supp.2d 1169, 1181 (D. Nev. 1999).

The FDCPA grants the successful plaintiff "the costs of the action." 15 U.S.C. §1692k(a)(3). Long distance telephone and faxing expenses, as well as copying and postage have been awarded as costs. *Sousa v. Miguel* 32 F.3d 1370, 1374 (9th Cir. 1994). Recoverable costs include travel, photocopies, lodging, postage, telephone calls, and computerized research. *Libertad v. Sanchez*, 134 F.Supp.2d 218, 236 (D.P.R. 2001). Costs may be recovered as provided for by statute as well as 28 U.S.C. § 1920. See: *Lathem v. Department of Children & Youth*

Servs., 172 F.3d 786, 794 (11th Cir. 1999). Computer research costs are recoverable. *United Nuclear Corp. v. Cannon*, 564 F.Supp. 581, 591-92 (D.R.I. 1983).

CONCLUSION

Based upon the lodestar calculation, attorney fees should be awarded to Plaintiffs' counsel in the amount of \$21,434.00. An award of \$847.46 as costs and litigation expenses should also be awarded.

Respectfully submitted this 13th day of July 2016,

CLARKE BALCOM, P.C.

By: /s/ Jacob D. Braunstein

Jacob D. Braunstein, OSB No. 062849
Email: jbraunstein@clarkebalcomlaw.com
1312 SW 16th Ave., 2nd Floor
Portland, OR 97201
Telephone: 503-224-5950
Fax: 503-467-4669

Of Attorneys for Plaintiff

EXHIBIT A

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor

Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
23-Feb-15	\$375.00	ECB	1.7	Initial consultation regarding collection harassment (1.5); detailed notes regarding situation (.2)	\$ 637.50
	\$0.00	HL	0.9	Prepare new client file	\$ -
26-Feb-15	\$160.00	CAF	0.2	Review forwarded Bill of Sale and Stipulated Agreement from Pinnacle	\$ 32.00
2-Mar-15	\$160.00	CAF	0.3	Phone to client regarding status and next steps	\$ 48.00
6-Mar-15	\$160.00	ET	0.1	Phone from client regarding phone call with Pinnacle	\$ 16.00
6-Mar-15	\$160.00	CAF	0.1	Review and respond to client email regarding conversation with Pinnacle	\$ 16.00
13-Mar-15	\$160.00	CAF	0.2	Review multiple emails from client regarding transcripts of calls from Pinnacle; phone call to client regarding same	\$ 32.00
27-Mar-15	\$0.00	HL	0.1	Phone call from client with question; take message	\$ -
30-Mar-15	\$0.00	ET	0.1	Return call to client, leave message	\$ -
21-Apr-15	\$160.00	ET	0.1	Brief meeting with client; note to file	\$ 16.00
22-Apr-15	\$160.00	CAF	0.3	Phone to client to follow up on additional calls with creditor and recordings of same	\$ 48.00
13-May-15	\$350.00	JDB	0.5	Review file, notes and emails	\$ 175.00
14-May-15	\$350.00	JDB	1.0	Review phone and email notes of creditor contacts; phone call to client to follow up regarding new information (.5); prepare timeline of creditor communications for complaint (.5);	\$ 350.00
14-May-15	\$350.00	JDB	0.7	Research regarding specific violations of FDCPA in this case (.6); notes to file (.1)	\$ 245.00
14-May-15	\$350.00	JDB	0.5	Start draft Complaint	\$ 175.00
15-May-15	\$160.00	CAF	0.1	Phone call from client regarding new calls from Michael Goldberg at Pinnacle	\$ 16.00
15-May-15	\$350.00	JDB	2.2	Review new emails from client (.3); draft timeline of violations (.5); continue drafting Complaint (1.4)	\$ 770.00
19-May-15	\$350.00	JDB	1.3	Revise timeline of FDCPA violations (.3); draft Complaint (1.0)	\$ 455.00
20-May-15	\$350.00	JDB	0.2	Continue work on Complaint	\$ 70.00
21-May-15	\$350.00	JDB	0.3	Work on timeline of FDCPA violations	\$ 105.00
28-May-15	\$350.00	JDB	2.0	Continue draft of Complaint	\$ 700.00
24-Jun-15	\$350.00	JDB	0.4	Revise Complaint	\$ 140.00

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor
Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
29-Jun-15	\$350.00	JDB	0.8	Research regarding TCPA and TCPA Complaints for additional claims relating to collection calls	\$ 280.00
29-Jun-15	\$350.00	JDB	0.5	Continue drafting Complaint	\$ 175.00
15-Jul-15	\$350.00	JDB	2.5	Begin edits to Complaint	\$ 875.00
16-Jul-15	\$350.00	JDB	0.5	Research regarding defendant, address of registered agent for service, membership in ACA	\$ 175.00
16-Jul-15	\$350.00	JDB	0.5	Revise Complaint	\$ 175.00
16-Jul-15	\$350.00	JDB	0.6	Draft Civil Cover Sheet, prepare documents for filing	\$ 210.00
16-Jul-15	\$350.00	JDB	0.3	Review and prepare Summons	\$ 105.00
30-Jul-15	\$350.00	JDB	0.1	Revise Complaint	\$ 35.00
26-Aug-15	\$350.00	JDB	0.1	Review email from client regarding additional voicemails, setting appointment	\$ 35.00
1-Sep-15	\$0.00	CAF	0.9	Meet with client to obtain additional information	\$ -
1-Sep-15	\$350.00	JDB	0.9	Meet with client to obtain additional information	\$ 315.00
3-Sep-15	\$350.00	JDB	0.8	Review transcripts of phone calls and messages received from Pinnacle	\$ 280.00
3-Sep-15	\$350.00	JDB	1.2	Research potential specific FDCPA violations apparent in transcript of calls and messages from Pinnacle	\$ 420.00
3-Sep-15	\$350.00	JDB	1.0	Draft and revise Complaint	\$ 350.00
8-Sep-15	\$350.00	JDB	1.5	Draft and revise FDCPA Complaint	\$ 525.00
10-Sep-15	\$350.00	JDB	0.1	Email to client to follow up on adding mother as additional plaintiff	\$ 35.00
15-Sep-15	\$0.00	MB	0.1	Phone to client to follow up on email and adding mother to case	\$ -
15-Sep-15	\$0.00	MB	0.1	Email to client to obtain mothers contact information	\$ -
17-Sep-15	\$350.00	CAF	0.1	Email from client, new threat recording from Pinnacle regarding IRS	\$ 35.00
21-Sep-15	\$350.00	CAF	0.2	Multiple emails to and from client regarding phone message Pinnacle threat to file lawsuit	\$ 70.00
21-Sep-15	\$350.00	JDB	0.1	Review emails from client regarding additional contacts by Pinnacle	\$ 35.00
25-Sep-15	\$160.00	CAF	1.7	Meet with second Plaintiff (Lisbeth Applefield) regarding calls to her, situation (1.2); extensive notes to file (.5)	\$ 272.00

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor

Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
28-Sep-15	\$350.00	JDB	0.2	Reviewing notes of client conference with second Plaintiff	\$ 70.00
28-Sep-15	\$160.00	CAF	1.8	Review all communications from Pinnacle; review and update timeline of events	\$ 288.00
28-Sep-15	\$350.00	JDB	1.0	Revise Complaint to add second plaintiff	\$ 350.00
29-Sep-15	\$0.00	JDB	0.5	Research and review old FDCPA Complaints	\$ -
29-Sep-15	\$350.00	JDB	0.8	Revise Complaint for 2nd plaintiff and additional violations	\$ 280.00
30-Sep-15	\$350.00	JDB	1.6	Continue revision of Complaint for additional Plaintiff and claims	\$ 560.00
1-Oct-15	\$350.00	JDB	2.0	Continue work on Complaint	\$ 700.00
1-Oct-15	\$0.00	JDB	0.5	Review TCPA Complaints	\$ -
2-Oct-15	\$350.00	JDB	3.0	Revise Complaint for TCPA violations	\$ 1,050.00
2-Oct-15	\$350.00	JDB	0.1	Phone to Lisbeth regarding whether Pinnacle calls	\$ 35.00
2-Oct-15	\$160.00	CAF	0.1	Phone from Lisbeth regarding calls; forward notes to attorney	\$ 16.00
5-Oct-15	\$350.00	JDB	0.1	Review phone note from Lisbeth Applefield call	\$ 35.00
5-Oct-15	\$350.00	JDB	0.6	Revise Complaint, TCPA claim based on information from client	\$ 210.00
8-Oct-15	\$160.00	CAF	0.2	Phone call to client regarding status of complaint, obtain additional information	\$ 32.00
8-Oct-15	\$160.00	CAF	1.5	Review Complaint (.9); call to client for additional information; (.2); continue Complaint review and memo (.4)	\$ 240.00
8-Oct-15	\$0.00	JDB	0.4	Review memo and notes regarding Complaint	\$ -
14-Oct-15	\$350.00	JDB	1.6	Meet with client regarding latest developments: calls to work and co-workers (1.4); notes to file (.2)	\$ 560.00
14-Oct-15	\$0.00	CAF	1.3	Meet client regarding latest developments, phone calls made to work and co-workers	\$ -
16-Oct-15	\$350.00	JDB	0.6	Review email from client regarding collection calls to his work, who was contacted, effect on job prospects (.2); revise Complaint (.4)	\$ 210.00
22-Oct-15	\$130.00	AK	4.8	Transcribe multiple audio files: Pinnacle voicemail messages to client	\$ 624.00
22-Oct-15	\$350.00	JDB	0.5	Review transcript of newest creditor calls; email to client regarding getting list of	\$ 175.00

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor

Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
26-Oct-15	\$0.00	AK	0.1	Phone from client returning Attorney call; take message	\$ -
26-Oct-15	\$0.00	JDB	0.1	Phone to client to return call, leave message	\$ -
26-Oct-15	\$350.00	JDB	0.3	Phone from client regarding update: client turned down for job; notes to file	\$ 105.00
28-Oct-15	\$350.00	JDB	0.8	Review email from client regarding timeline of latest collection calls, corroborate with transcript of messages	\$ 280.00
29-Oct-15	\$350.00	JDB	2.0	Revise Complaint based on client timeline of new calls	\$ 700.00
30-Oct-15	\$350.00	JDB	0.3	Revise Complaint	\$ 105.00
2-Nov-15	\$350.00	JDB	0.4	Phone from client regarding reviewing the timeline of new calls, additional information; further revision of Complaint	\$ 140.00
3-Nov-15	\$350.00	JDB	0.1	Review and respond to email from client regarding lost executive director position, salary and benefits	\$ 35.00
4-Nov-15	\$350.00	JDB	0.1	Review email from client regarding current compensation, effect of losing executive director position	\$ 35.00
9-Nov-15	\$350.00	JDB	0.2	Further revise Complaint	\$ 70.00
24-Nov-15	\$350.00	JDB	0.5	Further revise Complaint	\$ 175.00
4-Dec-15	\$350.00	JDB	0.2	Emails to and from client regarding timeline of applying for Executive Director position, interviews, not getting the position, termination of current job	\$ 70.00
4-Dec-15	\$350.00	JDB	1.2	Revise Complaint to include newest developments	\$ 420.00
7-Dec-15	\$350.00	JDB	0.4	Work on Complaint	\$ 140.00
8-Dec-15	\$350.00	JDB	0.2	Work on Complaint revision	\$ 70.00
9-Dec-15	\$350.00	JDB	0.1	Email to client with questions regarding Complaint	\$ 35.00
9-Dec-15	\$350.00	JDB	0.1	Revise FDCPA Complaint	\$ 35.00
22-Dec-15	\$350.00	JDB	0.4	Emails to both Plaintiffs regarding review of Complaint, any changes or additional creditor calls; prepare Summons; revise Civil Cover Sheet	\$ 140.00
29-Dec-15	\$350.00	JDB	0.1	Additional email regarding Complaint review	\$ 35.00
29-Dec-15	\$160.00	CAF	0.2	status, prior boss as witness to calls	\$ 32.00
11-Jan-16	\$350.00	JDB	0.2	Review email from client regarding Complaint and attached changes	\$ 70.00
26-Jan-16	\$350.00	JDB	0.3	Revise Complaint to conform to client review	\$ 105.00

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor

Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
10-Feb-16	\$350.00	JDB	0.2	Research proper service address for defendant and revise Summons	\$ 70.00
10-Feb-16	\$350.00	JDB	0.5	Revise Complaint, convert to pdf, prepare documents for filing	\$ 175.00
11-Feb-16	\$0.00	JDB	0.2	Instructions to paralegal for filing; assist with filing	\$ -
11-Feb-16	\$160.00	ET	0.3	Prepare document for filing; file via ECF	\$ 48.00
12-Feb-16	\$350.00	JDB	0.2	Review emails from court regarding notices of filing, save filed documents	\$ 70.00
18-Feb-16	\$350.00	JDB	0.2	Review Notice of Case Assignment and Discovery Order for deadlines	\$ 70.00
3-Mar-16	\$350.00	JDB	0.1	Review email from court regarding Notice of Case Reassignment to different Judge	\$ 35.00
10-Mar-16	\$350.00	JDB	0.1	Review file, service documents; calendar deadline for Answer	\$ 35.00
14-Mar-16	\$160.00	CAF	0.1	Phone call with client regarding status of Pinnacle response	\$ 16.00
17-Mar-16	\$350.00	JDB	0.2	Review file, instructions to paralegal to verify service	\$ 70.00
17-Mar-16	\$160.00	ET	0.4	Research service address and Attorney receiving service; phone to registered agent for Pinnacle	\$ 64.00
31-Mar-16	\$350.00	JDB	1.0	Research and draft Request for Entry of Default, Certificate of Service, Declaration in Support	\$ 350.00
4-Apr-16	\$350.00	JDB	0.6	Draft and revise request for default, declaration in support	\$ 210.00
8-Apr-16	\$350.00	JDB	0.5	Draft plaintiff declarations regarding damages	\$ 175.00
8-Apr-16	\$350.00	JDB	0.5	Draft and revise request for default, declaration, Certificate of Service	\$ 175.00
8-Apr-16	\$350.00	JDB	0.2	Instructions to paralegal regarding filing documents	\$ 70.00
11-Apr-16	\$350.00	JDB	0.5	Review email from Court regarding Order Granting Request for Entry of Default; research and note strategy regarding next	\$ 175.00
27-Apr-16	\$350.00	JDB	0.1	Pull docket report from PACER	\$ 35.00
4-May-16	\$350.00	JDB	0.3	Draft letters regarding default to registered agent for Defendant	\$ 105.00
10-May-16	\$350.00	JDB	0.6	Research and draft Motion for Default Judgment	\$ 210.00
10-May-16	\$350.00	JDB	0.4	Note to file regarding strategy for default judgment	\$ 140.00

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor

Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
11-May-16	\$0.00	JDB	0.7	Outline and prepare Declarations for Motion for Default	\$ -
18-May-16	\$350.00	JDB	0.5	Phone from client regarding status update, default, next steps; notes to file	\$ 175.00
18-May-16	\$350.00	JDB	0.4	Draft declaration of Counsel for Motion for Default Judgment	\$ 140.00
18-May-16	\$350.00	JDB	0.4	Draft Motion for Default Judgment	\$ 140.00
24-May-16	\$0.00	JDB	0.3	Outline and draft declaration of Nathaniel Applefield	\$ -
27-May-16	\$0.00	JDB	0.1	Phone to court regarding motion for default, procedures	\$ -
27-May-16	\$350.00	JDB	0.5	Draft/review Motion for Default Judgment, Declaration of Counsel, Certificate of Service	\$ 175.00
27-May-16	\$350.00	JDB	0.2	Prepare documents for filing, file with court	\$ 70.00
6-Jun-16	\$350.00	JDB	0.1	Review email from court regarding scheduling hearing; instructions to paralegal regarding contacting clients	\$ 35.00
7-Jun-16	\$160.00	ET	0.3	Calls to clients regarding court and testimony preparation	\$ 48.00
7-Jun-16	\$350.00	JDB	0.1	Email to court regarding confirming eligibility for hearing on damages	\$ 35.00
14-Jun-16	\$350.00	JDB	1.2	Client conference with Lisbeth to prepare for Default Judgment Hearing (1.1); notes to file (.1)	\$ 420.00
17-Jun-16	\$0.00	JDB	0.4	Prepare for Default Judgment Hearing	\$ -
17-Jun-16	\$350.00	JDB	1.1	Client conference with Nathan regarding preparation for Default Judgment Hearing (1.0); notes to file (.1)	\$ 385.00
22-Jun-16	\$350.00	JDB	1.0	Prepare for Default Judgment Hearing	\$ 350.00
22-Jun-16	\$350.00	JDB	1.1	Attend Default Judgment Hearing (1.0); notes to file (.1)	\$ 385.00
22-Jun-16	\$162.50	JDB	0.6	Travel for Default Judgment Hearing - half rate	\$ 97.50
	Total Time		75.6	Total Attorney Fees	\$ 21,434.00
11-Feb-16	\$400.00		1	Filing fee for filing complaint	\$ 400.00
18-Mar-16	\$447.46		1	Service on Pinnacle Asset Group	\$ 447.46
				Total Costs	\$ 847.46
				Total Fees and Costs	\$ 22,281.46

Exhibit A

Clarke Balcom Law

1312 SW 16th Ave, 2nd Floor
Portland, OR 97201

Ph: (503) 224-5950 Fax: (503) 467-4669

Client Name: Nathaniel Applefield

Invoice #: 2016-4665

Date: 12 July 2016

<u>Date</u>	<u>Rate</u>	<u>Person</u>	<u>Time</u>	<u>Work Done</u>	<u>Amount</u>
<u>Attorneys</u>			<u>Hours</u>	<u>Rate</u>	<u>Fees by person</u>
ECB	Clarke Balcom		1.7	\$375.00	\$ 637.50
JDB	Jacob Braunstein		57.2	\$350.00	\$ 18,787.50
<u>Paralegals</u>			<u>Hours</u>	<u>Rate</u>	<u>Fees by person</u>
MB	Michelle Benedict		0.2	\$130.00	\$ -
CAF	Chris Flamm		9.3	\$160.00	\$ 1,193.00
AK	Amy Kaufman		4.9	\$130.00	\$ 624.00
HIL	Hollande Lawrence		1.0	\$0.00	\$ -
ET	Eloise Tiller		1.3	\$160.00	\$ 192.00

Jacob D. Braunstein, OSB# 062849
jbraunstein@clarkebalcomlaw.com
E. Clarke Balcom, OSB# 011952
cbalcom@clarkebalcomlaw.com
CLARKE BALCOM, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201-2516
Telephone (503) 224-5950
Fax (503) 467-4669
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**NATHANIEL J. APPLEFIELD,
LISBETH APPLEFIELD,**

Plaintiffs,

v.

PINNACLE ASSET GROUP, LLC,

Defendant.

Case No. 3:16-cv-00256-YY

DECLARATION OF JACOB D.
BRAUNSTEIN IN SUPPORT OF
MOTION FOR AN AWARD OF
ATTORNEY FEES

I, Jacob D. Braunstein, declare as follows:

1. I am an attorney practicing in the law firm of Clarke Balcom, P.C., located in Portland, Oregon. I have been lead trial counsel and have had primary responsibility for litigating this case on behalf of Plaintiffs. I am competent to testify to the matters set forth in this declaration and do so based on personal knowledge.

2. I have been admitted to the practice of law since September 27, 2006.

3. I am admitted to practice within the State and Federal courts of Oregon.
 4. I am an experienced litigation attorney, including experience in FDCPA litigation.
 5. I am also an experienced bankruptcy attorney, including experience in bankruptcy litigation.
 6. Plaintiffs are the prevailing party in this litigation pursuant to 15 U.S.C. § 1692k(a)(3) and ORS 646.641(2).
 7. The total amount of attorney fees and expenses requested is \$22,281.46.
 8. Seven time-keepers from Clarke Balcom, P.C., were involved in this litigation. The name, position, and level of experience of each individual time-keeper together with his or her current hourly billing rate, the number of hours billed, and the total amount of fees billed to the time-keeper are summarized in the following chart:
- | Name | Position | Rate | Number of Hours | Total Fees Billed |
|-----------------------------|--------------------|-------------|------------------------|--------------------------|
| Clarke Balcom | Senior Attorney | \$375 | 1.7 | \$637.50 |
| Jacob Braunstein | Associate Attorney | \$350 | 57.2 | \$18,787.50 |
| Chris Flamm | Paralegal | \$160 | 9.3 | \$1,193.00 |
| Eloise Tiller | Paralegal | \$160 | 1.3 | \$192.00 |
| Amy Kaufman | Paralegal | \$130 | 4.9 | \$624.00 |
| Hollande Lawrence | Paralegal | \$130 | 1.0 | \$0.00 |
| Michelle Benedict | Paralegal | \$130 | 0.2 | \$0.00 |
| Total Fees Incurred: | | | | \$21,434.00 |

9. Clarke Balcom, PC, contemporaneously kept records reflecting our services in this litigation, a copy of which is attached hereto as Exhibit A.

10. The billing rates listed in the above chart are reasonable and are similar to those customarily charged for the consumer law practice area in the legal community located in Portland, Oregon. The latest Oregon State Bar (OSB) Economic Survey dated August, 2012 reflects that lawyers with similar number of years of practice in this geographic area bill at rates between \$233.00 and \$428.00 per hour. This OSB survey is nearly four years old.

11. My current hourly rate is \$350.00, which is justified by my experience, the nature and complexity of the cases, and the relative risk involved in consumer cases. I bill \$350.00 per hour to clients on non-contingency consumer matters in state and federal court.

12. The total number of hours billed for which compensation is sought is reasonable under the circumstances of this case. This case has been ongoing since February, 2015 when Defendant first began contacting Plaintiffs. Defendant's unlawful conduct stretched from February, 2015 through October, 2015 and included at least thirty (30) separate violations of the Fair Debt Collection Practices Act, Telephone Consumer Protection Act and the Oregon Unlawful Debt Collection Practices Act combined. Defendant's unlawful conduct continued even after Defendant had been notified that our firm represented Plaintiffs. Each of the instances of unlawful conduct had to be analyzed for purposes of this litigation and evidence gathered to support the allegations in the Complaint. Thanks in large part to the large number of violations and the length of time over which the violations occurred, the allegations in Plaintiffs' Complaint span a length of twenty-five (25) pages. The Complaint itself was revised multiple times to include Defendant's continuing violations. In addition, it should be noted that there are multiple instances in our billing records where services rendered have been discounted to \$0.00.

///

///

13. Litigation expenses that were reasonably and necessarily incurred in this matter total \$847.46. These out-of-pocket expenses were billed separately from attorney fees in accordance with our firm's standard practices and the prevailing custom in this legal community. A summary of all reimbursable litigation expenses incurred in this matter is included in Exhibit A.

I hereby declare that the above statement is true and accurate to the best of my knowledge and belief, and that I understand it is subject to penalty for perjury.

Dated this 13th day of July 2016,

s/ Jacob D. Braunstein

Jacob D. Braunstein, OSB No. 062849
Email: jbraunstein@clarkebalcomlaw.com
1312 SW 16th Ave., 2nd Floor
Portland, OR 97201
Telephone: 503-224-5950
Fax: 503-467-4669

Of Attorneys for Plaintiff

Jacob D. Braunstein, OSB# 062849
jbraunstein@clarkebalcomlaw.com
E. Clarke Balcom, OSB# 011952
cbalcom@clarkebalcomlaw.com
CLARKE BALCOM, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201-2516
Telephone (503) 224-5950
Fax (503) 467-4669
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**NATHANIEL J. APPLEFIELD,
LISBETH APPLEFIELD,**

Plaintiffs,

v.

PINNACLE ASSET GROUP, LLC,

Defendant.

Case No. 3:16-cv-00256-YY

DECLARATION OF E. CLARKE BALCOM
IN SUPPORT OF MOTION FOR AN AWARD
OF ATTORNEY FEES

I, E. Clarke Balcom, declare as follows:

1. I am one of the attorneys for the Plaintiffs above named.
2. I have read the Complaint filed in this action and know the contents thereof, and the same is true to the best of my knowledge, information and belief.
3. I have been admitted to the practice of law since October 4, 2001.
4. I am the senior attorney at my firm, Clarke Balcom, P.C., located in Portland, Oregon.

5. I am admitted to practice within the State and Federal courts of Oregon.
6. I am an experienced attorney, including experience in FDCPA litigation.
7. I am also an experienced bankruptcy attorney.
8. My current hourly rate is \$375.00, which is justified by my experience, the nature and complexity of the cases, and the relative risk involved in consumer cases.
9. I bill \$375.00 per hour to clients on non-contingency consumer matters in state and federal court and these rates are routinely approved in consumer cases.
10. Attached hereto as Exhibit A is a true and correct copy of my time and billing records in this matter.

I hereby declare that the above statement is true and accurate to the best of my knowledge and belief, and that I understand it is subject to penalty for perjury.

Dated this 13th day of July 2016,

s/ E. Clarke Balcom

E. Clarke Balcom, OSB No. 011952

Email: cbalcom@clarkebalcomlaw.com

1312 SW 16th Ave., 2nd Floor

Portland, OR 97201

Telephone: 503-224-5950

Fax: 503-467-4669

Of Attorneys for Plaintiff

Jacob D. Braunstein, OSB# 062849
jbraunstein@clarkebalcomlaw.com
E. Clarke Balcom, OSB# 011952
cbalcom@clarkebalcomlaw.com
CLARKE BALCOM, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201-2516
Telephone (503) 224-5950
Fax (503) 467-4669
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**NATHANIEL J. APPLEFIELD,
LISBETH APPLEFIELD,**

Plaintiffs,

v.

PINNACLE ASSET GROUP, LLC,

Defendant.

Case No. 3:16-cv-00256-YY

DECLARATION OF CHRIS FLAMM
IN SUPPORT OF MOTION FOR AN
AWARD OF ATTORNEY FEES

I, Chris Flamm, declare as follows:

1. I am the legal assistant for the attorneys for the Plaintiffs above named.
2. I have read the Complaint filed in this action and know the contents thereof, and the same is true to the best of my knowledge, information and belief.
3. My primary responsibilities include providing support for attorneys E. Clarke Balcom and Jacob D. Braunstein.

4. As part of my responsibilities, I am knowledgeable of the billing for attorney fees on this case.

5. Also, as part of my responsibilities, I have a great deal of contact with the clients of Clarke Balcom, P.C.

6. As part of my responsibilities, I have had a great deal of contact with Nathaniel Applefield and Lisbeth Applefield, the Plaintiffs in this action.

7. At the direction of the attorneys on this case, I have maintained and compiled all attorney billing records incurred while litigating this matter.

8. At the direction of the attorneys on this case, I have maintained and compiled all billing records for legal assistants incurred while litigating this matter.

9. At the direction of the attorneys in this case, I have maintained and compiled all costs expended by this firm, Clarke Balcom, P.C., in litigating this matter.

10. Attached hereto as Exhibit A is a true and correct copy of the billing records in this matter.

11. The total amount due by Defendant is based upon the claims set forth in the Complaint, and includes the following sums Clarke Balcom, P.C. incurred in litigating this case:

- \$21,434.00 for reasonable and necessary attorney fees incurred in litigating the above-captioned case, including discounts and write-offs of time;
- \$547.46 for reasonable and necessary costs incurred in litigating the above-captioned case.

12. The billing record attached hereto as Exhibit A includes the time of the attorneys as well as time spent by paralegals.

13. The attorneys are identified by the initials ECB for E. Clarke Balcom and JDB for Jacob D. Braunstein in the attached Exhibit A. All other individuals are legal assistants.

14. As a specialized paralegal, my billing rate is \$160.00 per hour. This rate has been approved by the courts hundreds of times.

15. I am identified by the initials CAF in the billing records.

16. All of the items contained on the attached Exhibit A are correct and are representative of services actually and necessarily performed in this case.

17. Attorney Clarke Balcom performed legal services in this matter totaling 1.7 hours.

18. Attorney Jacob Braunstein performed legal services in this matter totaling 57.2 hours.

19. I performed services in this matter totaling 9.3 hours.

20. Other legal assistants performed services in this matter totaling 7.4 hours.

I hereby declare that the above statement is true and accurate to the best of my knowledge and belief, and that I understand it is subject to penalty for perjury.

Dated this 13th day of July 2016,

s/ Chris Flamm

Chris Flamm, Legal Assistant
Clarke Balcom, P.C.
1312 SW 16th Ave., 2nd Floor
Portland, OR 97201

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Plaintiff's MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS, MEMORANDUM IN SUPPORT, EXHIBIT A, DECLARATION OF JACOB D. BRAUNSTEIN, DECLARATION OF CHRIS FLAMM, and DECLARATION OF E. CLARKE BALCOM to be served on the following person(s):

Raymond C. Stilwell
Law Offices of Raymond C. Stilwell
4476 Main St., Suite 120
Amherst, NY 14226

by the following indicated method or methods:

- by CM/ECF electronically mailed notice from the Court on the date set forth below.
- by mailing full, true and correct copies thereof in sealed, first class postage prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or attorneys, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by causing full, true, and correct copies thereof to be hand-delivered to the parties and/or their attorneys at their last-known office addresses listed above on the date set forth below.
- by sending full, true, and correct copies thereof, via overnight courier in sealed, prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or their attorneys, on the date set forth below.
- by faxing full, true, and correct copies thereof to the fax machines which are the last known fax numbers for the parties' and/or attorneys' offices, on the date set forth below.

Dated: July 13, 2016.

s/ Jacob D. Braunstein

Jacob D. Braunstein, OSB No. 062849
of Attorneys for Plaintiff
Clarke Balcom, P.C.
1312 SW 16th Ave, 2nd Floor
Portland, OR 97201-2516
Telephone: 503-224-5950
Fax: 503-467-4669